

FACT FINDING DISCUSSION AND RECOMMENDATIONS

Between)

Re: Case No. SA-IM-3136-E

Lodi)

Unified School District)

and)

California School)

Employees Association)

Chapter #77)

Impartial Chair

Bonnie Prouty Castrey
Post Office Box 5007
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District Panel Member

Ron Bennett, President
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Association Panel Member

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Hearings Held

October 28, 2010
November 17, 2010
Lodi Unified School District Offices
1305 E. Vine Street
Lodi, C 95240-3148

BACKGROUND

Lodi Unified School District (District, LUSD or Employer) and the California School Employees Association Chapter #77 (Association or CSEA), a local affiliate of the California School Employees Association (CSEA), are the parties in this fact finding matter. The classified staff in this bargaining unit are members of CSEA. They are nine to twelve month hourly employees depending on their classification and hours/days of assignment.

This is a re-opener of the July 1, 2007 through June 30, 2010 collective Bargaining Agreement (CBA) (District Facts {DF}, Appendix K). Because of the decreased state funding to school districts statewide and to this District specifically, the District sought concessions from all employees in the District. The specifics of those concessions will be discussed below.

The parties engaged in eleven negotiation sessions from October, 2009 to March 29, 2010 for approximately 60 hours. When agreement was not reached, the District filed with PERB for impasse on March 24, 2010. The District withdrew this initial Request without prejudice and the parties engaged in another direct negotiation session, for "over 14 hours" wherein the District provided CSEA with two options for their consideration. At that negotiation session, both parties agreed to set their respective positions aside in order to reach a Tentative Agreement (TA) (see District Binder, Attachment G). That TA provided that if either party failed to ratify the TA, both parties' positions reverted to

their last proposals. CSEA members rejected the TA by nearly 70% of the members who voted and hence, the parties reverted to their prior stated positions.

Subsequently, the District again filed for an impasse with PERB. On April 23, 2010, PERB determined that the parties were at impasse and Mediator Steve Pearl was assigned to assist the parties. He met with the parties on three occasions and on July 24, 2010, certified the parties to Factfinding. On July 29, 2010, CSEA formally requested that the remaining differences be submitted to Factfinding and on September 15, 2010, CSEA told the District via email that they would not accept a salary reduction on their salary schedule for the 2009-2010 school year. A salary reduction was proposed by the District, to be implemented July 1, 2010 for the 2010-2011 school year.

When the parties were unable to reach agreement prior to June 30, 2010, for concessions, in order to realize a positive ending balance for Fiscal Year (FY) 2010-2011 and two successive years, as required by State Law, the District reduced hours and laid off members of this bargaining unit effective July 1, 2010. The total number of Full Time Equivalents (FTE's), which were reduced, is 120. This is about six (6) million dollars in classified staff reductions (DF 6).

CSEA filed an Unfair Labor Practice charge in June, 2010. Those charges are pending before PERB and will not be dealt with by this Panel as they are not within our jurisdiction.

The issues before this Panel are Inability to Pay, Salary, Health and Welfare, and Pay and Allowances.

The District selected Ron Bennett, President and CEO of School Services of California as the District Panel Member and the Association selected Janet Jones Sterling, Senior Labor Relations Representative CSEA to be their Panel Member. The Panel Members then selected Bonnie Prouty Castrey as the Impartial Chair and so notified PERB.

The Panel met in a conference call on October 7, 2010 to discuss the issues before us and the procedures for assisting these parties. When the CSEA Panel Member brought to the Panel's attention that the certificated bargaining unit had agreed to furlough days and one (1) was scheduled on November 12, the Friday following Veterans' Day, and that three (3) were scheduled November 22, 23 and 24, at the Thanksgiving Day Holiday, the Panel determined that they would hold a Factfinding mediation on October 28, 2010 to help the parties to reach an agreement. When that effort was not successful they held a formal hearing with the parties on November 17, 2010. Also discussed on October 7 and reiterated on October 28, 2010, was the procedure for the hearing. As the District was claiming Inability to Pay, they have the burden of proof and would present their facts first. Following a break and clarifying questions by the CSEA, the CSEA would present their facts and following another break, the District would ask clarifying questions.

As agreed, at the hearing, both parties presented their documentation and facts regarding the issues before the Panel. The Panel Members then attempted once again to help the parties to reach a mediated settlement in Fact Finding. When that second effort was not fruitful, the Members studied both party's submissions thoroughly and the Chair drafted this Report and Recommendations.

In this matter, the Panel is guided by the California Government Code Section 3548.2 of the EERA which states in pertinent part:

In arriving at their findings and recommendation, the Fact Finders shall consider, weigh, and be guided by all the following criteria:

1. State and federal laws that are applicable to the employer.
2. Stipulations of the parties.
3. The interests and welfare of the public and the financial ability of the public school employer.
4. Comparison of the wages, hours, and conditions of employment of the employers involved in the fact finding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public school employment in comparable communities.
5. The consumer price index for goods and services, commonly known as the cost of living.
6. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment and all other benefits received.
7. Such other facts, not confined to those specified in paragraphs (1) to (6), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations."

ADDITIONAL PERTINENT STATE LAWS

Government Code Section 3547.5

- (a) Before a public school employer enters into a written agreement with an exclusive representative covering matters within the scope of representation, the major provisions of the agreement, including, but not limited to, the costs that would be incurred by the public school employer under the agreement for the current and subsequent fiscal years, shall be disclosed at a public meeting of the public school employer in a format established for this purpose by the Superintendent of Public Instruction.
- (b) The superintendent of the school district and the chief business official shall certify in writing that the costs incurred by the school district under the agreement can be met by the district during the term of the agreement. This certification shall be prepared in a format similar to that of the reports required pursuant to Sections 42130 and 42131 of the Education Code and shall itemize any budget revision necessary to meet the costs of the agreement each year of its term.
- © If a school district does not adopt all of the revisions to its budget needed in the current fiscal year to meet the costs of the collective bargaining agreement, the county superintendent of schools shall issue a qualified or negative certification for the district on the next interim report pursuant to Section 42131 of the Education Code.

STIPULATIONS OF LUSD AND CSEA

1. The District is a public school employer within the meaning of Section 3540.1(j) of the Educational Employment Relations Act.
2. The CSEA is a recognized employee organization within the meaning of Section 3540.1(I) of the Educational Employment Relations Act and has been duly recognized as the representative of the classified bargaining unit of the District.
3. The parties to this factfinding have complied with the public notice provisions of the Government Code section 3547 (EERA, "Sunshining" requirement)
4. The parties have exchanged package proposals. The contract articles which are appropriately before the Factfinding Panel are as set forth below:

Addendum #2	Classified Salary Schedule
Article X, Paragraph A:	Health and Welfare Benefits
Article VIII	Pay and Allowances

5. An impasse in bargaining was declared by the Public Employment Relations Board ("PERB") on or about April 23, 2010. The mediation process proceeded, and the parties continued to meet with the mediator in an effort to reach agreement until July 22, 2010.
6. On July 24, 2010, the mediator certified the matter to factfinding.
7. The factfinding chairperson, Bonnie Castrey, was notified of her assignment by PERB on or about October 12, 2010.
8. The parties have complied with the Educational Employment Relations Act with regard to the selection of the Factfinding Panel and are timely and properly before the Panel.
9. The parties have complied with all the requirements for selection of the factfinding panel and have met or made the statutory time limitations applicable to this proceeding.

COMPARISON DISTRICTS

The District used two sets of comparison districts. The first is a local comparison group as members of the bargaining unit tend to live in these areas and could potentially seek employment in the neighboring districts. These local comparison districts include: Ceres USD, Escalon USD, Lincoln USD, Linden USD, Manteca USD, Modesto City Schools, Oakdale Joint USD, Patterson Joint USD, Ripon USD, Stockton City USD, Tracy Joint USD and Turlock USD.

Their second comparison group comprises districts statewide which have similar funded base revenue limits and are large unified districts, similar in size to Lodi USD. They include: Chino Valley USD, Desert Sands USD, Elk Grove USD, Fremont USD, Glendale USD, Hacienda-La Puente USD, Irvine USD, Lincoln USD, Manteca USD, Modesto City Schools, Orange USD, Placentia-Yorba Linda USD, Poway

USD, Rialto USD, San Jose USD, Stockton City USD, Torrance USD, Tracy Joint USD, Visalia USD, and Vista USD.

The CSEA compared itself to five unified school districts in San Joaquin County. They are: Stockton USD, Lincoln USD, Linden USD, Ripon USD and Tracy Joint USD.

Modesto City Schools and Oakdale Joint USD are located in Stanislaus County but within driving distance. Ceres USD and Turlock USD are also in Stanislaus County, but much further of a distance to drive.

The Chair will use the unified comparison districts which the Association identified plus Modesto City School District and Oakdale USD which the District identified, minus Ceres and Turlock which are not within a reasonable daily driving distance of Lodi USD. In addition some references will be to the State comparisons as they are similar in size and funded similarly. And, we are dealing with budgetary issues which impact the entire state.

The Chair also considered the internal comparability at Lodi USD as the teachers, psychologists, supervisors, management, confidential and Board and Superintendent had all endured concessions in 2009-2010 and those concessions are going forward until any restoration monies are available. These are taken into account as a measure of equity and balance among all employees. The details of the concessions will be discussed in more detail below.

The following is a discussion of the outstanding issues with recommendations.

ISSUES

INABILITY TO PAY

DISCUSSION AND FINDING

The first issue is the question of inability to pay.

When a district asserts inability to pay, they have the burden of proving that they cannot afford to continue paying at the level they currently are compensating employees and/or that they cannot afford to negotiate increases in compensation.

State law requires that school districts must maintain a positive ending balance in the current year and two successive school years. In other words, the budget for fiscal year/school year (FY) 2009-2010, which commenced July 1, 2009 and ends June 30, 2010, must have a positive ending balance and a minimum three percent reserve (3%). In addition, FY 2010-2011 and FY 2011-2012 must also be able to show a positive ending balance. In this matter, FY 2009-2010 is already history, the Panel will also have to consider 2012-2013 as, to comply with the State law, the District had to adopt a balanced budget on or before June 30, 2010 for the 2010-2011 school year and two successive years, through June 30, 2013.

Schools in California are dependent on the State of California for their revenue. The State is and has been in fiscal "meltdown" for several years since at least 2007. Some economists have described California's budget as being in "free fall".

As a result of the State budget shortfall due to decreased

sales tax, income tax, and other revenues, the State has unceremoniously cut school districts' unrestricted and categorical (restricted) funding by literally billions of dollars. For this District this amounts to more than a twenty percent (20%) decrease in unrestricted funding and about twenty percent (20%) in restricted funding. Had the State not cut its unrestricted funding, also referred to as Base Revenue Limit (BRL), LUSD would have received in the 2009-2010 FY, \$6,372.00 for each student attending class each day (Average Daily Attendance or ADA). Because the State decreased its full funding of the BRL, the District received only \$4,950.00, a difference of \$1,422.00 equal to a 22.3% decrease in funding. In FY 2010-2011, the LUSD should receive \$6,347.00, however, according to the current State budget, adopted on October 8, 2010, the State will only fund the BRL at \$5207.00 per ADA. This represents a \$1,140.00 deficit, equal to 18.0%. Furthermore, based on the State's continuing budget crisis another special legislative session has been called by the current governor. This deficit factor means that for every one dollar this District should receive for each student who attends class each day, it is only receiving about 82 cents! (District Facts [DF] Inability to Pay tabs 14-15).

There is no question that these are huge losses in unrestricted revenues. The District is spending down its reserves and is therefore deficit spending. As reserves are only one time monies, this is very serious. The District took action to severely cut its costs through negotiated concessions with the certificated

bargaining units, the supervisory unit and via Board actions to decrease overall compensation for Classified and Certificated Management and Confidential employees.

Additionally, as the State has authorized flexibility in the use of some categorical funds for their use in the general fund, the District has used this flexibility, known as "Categorical Sweeps" of Tier III programs in order to mitigate some of the draconian personnel cuts. The total revenue "swept" from the categorical funds to the general fund in both one time and on-going funds is just over five million dollars. They also reduced positions and made across-the-board budget reductions (DF Tab 16 page 130-164).

This District's total expenditure for staff compensation is 94.37%. This places them third when compared to similarly situated districts statewide. The range is from 87.92% to 96.07%. The statewide average of all unified districts in the state is 92.16% (DF tab 18).

Absent a negotiated agreement for concessions from this bargaining unit in the 2009-2010 school year, the District reduced hours and laid off staff in an amount of about six (6) million dollars effective July 1, 2010. This action was implemented for the 2010-2011 school year and resulted an equivalent of about 120 FTE's having their hours cut substantially or being laid off (DF 6). There actually were initially 124 positions, but 4 positions were retained through use of some categorical funds that were not swept into the general fund.

Because those cuts for this bargaining unit were effective as of July 1, 2010, the beginning of the 2010-2011 school year, they significantly impact the District's budget going forward for the 2011-2012 school year and 2012-2013 years. With the afore mentioned actions throughout the District and the reductions to this unit, the District is able to show a positive ending balance and certification through June 30, 2013. Absent these major budget modifications, they projected deficit spending in the amount of nearly thirty seven and a half million dollars in fiscal year 2010-2011, twenty eight and a third million dollars in 2011-2012 and just over twenty seven million dollars in 2012-2013. (DF tab 17, pg 168 and 166).

In the 2009-2010 school year, which is now completed, the certificated unit (teachers) negotiated concessions including furlough days and had further reductions of 256.17 full time equivalent positions (FTE's). The Pupil, personnel unit had a total of 4 FTE's eliminated and the Supervisory Unit had 2 FTE's eliminated as a result of their overall negotiated agreements. The confidential employees had two FTE's reduced and administrators have a reduction equal to 3.9 FTE's with 0.25% being bought back with categorical monies.

This CSEA bargaining unit has sustained significant reductions by attrition and through reductions in hours and layoffs. At the commencement of school year 2008-2009, there were 808.62 FTE's. At July 1, 2009 there were 690.14 FTE's a decrease of 118 FTE's. And

on July 1, 2010, there were 570.14 FTE's for an additional decrease of 120 FTE's (Provided to the Panel, by Member Sterling, at the Chair's request on 12/17/10).

To make fiscal matters worse and certainly more complicated, this District is experiencing a decline in enrollment. While districts are funded on the prior years' ADA, which helps to provide a small cushion in the next year, the loss of enrollment and therefore ADA is significant and severely impacts the District's ongoing funding and projections in the three year projections of the ending balance. From 2007-08 to 2008-09 the decline was 300 ADA. From 2008-09 to 2009-2010 it was another 261 ADA and from 2009-2010 to 2010-2011, the projection is another 285 students. This total of approximately 847 students' ADA is significant. That loss of funding is an ongoing 4.4 million dollars (DF 13 pg 104).

The Association shows actual enrollment figures from a high in 2007-2008 of 31,608 with an actual enrollment decline by 2009-2010 of 767 students. The difference in these counting methods is actual enrolled students verses numbers of students in attendance each day (ADA). (AF section H)

The Association in its analysis of the budget shows the total ending balance growing from 11.2% in 2003-2004 to 18.7% in 2009-2010 (AF I). The total ending balance at the end of any school year includes carryover funds from school sites as well as any fund balances and significantly these figures appear to include the restricted categorical funds as well as the general fund monies.

The District's 2010-11 budget estimated the 2008-09 end of year balance to be 22 million dollars. The 2008-09 unaudited actuals shows the end of year balance to be 45 million dollars. This improvement was due to three factors, all as a result of State actions:

- 1) The State failed to complete legislative action to reduce district funding prior to June 30, 2009. The funding therefore, remained in the District's ending fund balance on June 30, 2009. Subsequently, in July 2009 after a special legislative exemption was passed and signed by the Governor, it was removed. This amounted to approximately 8 million dollars for Lodi USD.
- 2) The State, for the first time, distributed categorical funds subject to flexibility as unrestricted dollars.
- 3). The unplanned Federal Stimulus dollars were distributed by the California Department of Education in June 2009, which was too late for the District to spend them before June 30, 2009.

Except for the Tier III flexibility which is currently provided through June 30, 2013 when that flexibility expires, categorical funds must be used only for their designated purpose. In addition, the 2009-2010 ending balance does not contain any concessions from this bargaining unit and the 120 FTE's which are reduced in June 2010, take effect on July 1, 2010.

As stated above, the District, by law, must show a positive ending balance and a district this size should have at least a 3% reserve for fiscal uncertainty in the ending balance. Hence, going

forward three years through 2012-2013, the District must show that the ending balances in 2010-2011, 2011-2012 and 2012-2013 meet that 3% reserve for economic uncertainty. Otherwise, the County which reviews their budget will certify them either qualified or in the worst case negative. At that point, a district has an outside fiscal advisor assigned to assist them in budgeting and in the most severe cases the state takes over the fiscal matters of the district. Clearly, good fiscal management is in both the District and the Association's interest, as the cost of mismanagement is the loss of local control which is not in either party's interest.

Under State law, the Education Code at Section 3547.5 provides that the superintendent of the district and the chief business official must sign that a collective bargaining agreement can be implemented and is affordable for the term of that agreement. The District asserts that they cannot continue to afford to pay the total compensation at the level in the current Collective Bargaining Agreement (CBA) and therefore they cannot certify the continuation of the terms of this CBA and meet the requirements of the law.

The Association, on the other hand argues that the District is proposing severe salary decreases and they maintain that this bargaining unit has already taken its "fair share" of cuts. As stated above, they sustained reductions in force in prior years which saved the District money and they maintain that the District has failed to give them credit for those reductions. CSEA does not argue that no concessions are necessary, but argues vehemently that

the District is asking for substantially more concessions than are necessary from this unit and more than its share of concessions as compared to the other employees in the District. Moreover, the 120 positions which were reduced at the conclusion of the 2009-2010 school year should be credited to this bargaining unit as many members had their salaries decreased and/or lost health benefits as a result of hours being cut and others were laid off.

They argue that the "fair share" really must take into account the reductions in hours and numbers of employees as well as overall compensation.

From the Chair's study of the budget documents, it is a fact that the District is spending down its general fund reserves and is in deficit spending, which is not sustainable, as it will lead to a negative certification and insolvency.

To make the District's budgetary woes even worse, they are experiencing a decline in enrollment and ADA, which exacerbates the funding issues. Since the 2004-2005 school year the decline in ADA has been from 32,714 to 30,905, a total of 1809 ADA which equates to 5.53% (DF tab 12) As stated above, districts are funded based on the number of students actually attending school. Therefore, the loss of ADA combined with the lack of a fully funded BRL severely hampers the District's ability to pay the current employee compensation during this statewide crisis.

Based on the foregoing and taking into consideration both parties facts and arguments, the Chair finds that the District has

met its heavy burden of proof and that it has shown that it does have an inability to pay this bargaining unit at the current total compensation in the CBA. Moreover, it has shown that substantial concessions spread over this year and next year are crucial in order to remain solvent.

The District maintains that it reduced staffing as the parties had not reached agreement on concessions, but that it is desirous of increasing services by restoring some positions.

The next question is how to address this critical matter without totally devastating the bargaining unit members' ability to live and the parties ability to effectively maintain and increase support services in order to deliver the educational programs of the District to students.

SALARY

Decreases in actual salary can be accomplished in several ways including decreases across the board to the salary schedule, delaying or freezing step and longevity increases and taking furlough days.

Overall this District spends 94.37% of budget on all staff. This is not surprising as education is a people intense business(DF tab 18, pg 167-168). That means when cuts are necessary to balance the budget and decrease the deficit spending, that the majority of cuts come from employee compensation concessions and reductions in the number of employees.

For all employees, 1% of salary costs \$1,590,273 or one and a

half million dollars. For this bargaining unit 1% of salary is equal to \$322,422 (DF tab 1, pg 13). The cost of a furlough day for CSEA bargaining unit members is \$125,560 (DF tab 2, pg 14).

Because this Panel can only deal with the 2009-2010 school fiscal year which is already completed, the Chair has no options to deal with delayed step movement on the salary schedule or furlough days. Nor can she spread the recommended concessions out over a couple of years. She essentially can only deal with a recommendation for a salary decrease to be implemented on June 30, 2010.

That is important to note as the earlier cuts are made, the greater the dollar savings in future years. In other words, a dollar that should be and is cut this year, is worth more in the following year. Additionally, the more time over which decreases can be made helps to spread the necessary dollar amounts so that bargaining unit members can plan for the impact of the decreases in compensation on their lives.

In the local comparison districts, employees in six of the seven districts took from 2-8 furlough days and no salary schedule decreases over and above the salary loss associated with the furlough days (AF presentation as supplemented 12/17/10). Only one district, Stockton had neither salary reductions nor furlough days. Each furlough day is generally a salary savings to the District of about 0.55% for 180 day employees; less for employees with longer work years. Therefore, the salary savings for the comparison

districts, that negotiated furlough days, range from just over 1% to about 4.4% beginning in 2009-2010.

HEALTH AND WELFARE

Health and welfare benefits remain a problem in terms of the increasing costs of health care premiums. The District points out that a regular full time employee who works five days a week and an eight hour day for at least a full term, the District provides capped health care coverage including medical, dental, vision and prescription. This is a capped benefit and employees pay the difference depending on their chosen plan.

For bargaining unit employees, in this unit, who work fewer hours, their contribution is prorated. In their presentation the CSEA made the point that as hours are cut, employees must pay more of their insurance benefit, which is an added financial burden.

RECOMMENDATIONS

Considering that the 2009-2010 fiscal year is completed, the Chair has no ability to recommend changes in Health and Welfare Benefits, furlough days or deferred step and/or longevity increases to help mitigate overall impact to the employees and save the District a reasonable amount of money. In addition as this is a Report and Recommendation for only the 2009-2010 school year, one year, it is not possible to spread the concessions over a two or three year period to help to mitigate impact and provide employees an opportunity to plan.

Salary

Taking into account the reductions in hours, which impacted Health and Welfare contributions for many employees, and the reduction of 118 FTE's in the 2008-2009 school year but not the 120 FTE reductions which took effect in 2010-2011, the Chair recommends a Salary schedule reduction of 4.00% effective on June 30, 2010. This amount while less in percentage than other employees have negotiated or taken as a result of Board action, takes into account the internal comparability as well as the local area districts and the state wide comparables.

In this Report the Chair simply notes that going forward, as of July 1, 2010, the additional 120 FTE's were reduced or eliminated for the 2010-2011 school year.

Re-opener/Restoration Language

The Chair strongly recommends that language be written to promptly restore salary as quickly as possible in line with the restoration of other District employees, when monies become available, using both one time monies that can legally be spread over time and any increases by the State to the funded BRL. There are many samples of restoration language which the parties can use as reference to guide their negotiations.

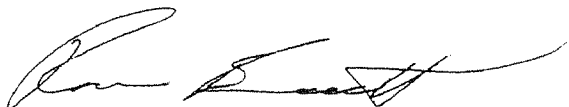
The Panel Members representing the District and Association have met in Executive Session by conference calls on December 17, 2010 and December 21, 2010. Based on the above Recommendations of the Chair they concur or dissent as follows:

For the District:

 X Concur
 Dissent

For the Association:

 X Concur
 Dissent



Ron Bennett
District Panel Member



Janet Jones Sterling
Association Panel Member

Issued on December 31, 2010 by



Bonnie Prouty Castrey
Panel Chair